

SECULARISM AND SHARIA LAW: NIGERIAN GOVERNMENT POSITION

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Abstract

This paper center's on "Secularism and Sharia Law: Nigerian Government Position". The increased siding and participation of the Nigerian government in religious matters such as: registering and admitting Nigeria into the Organization of Islamic Countries (OIC), the introduction of Islamic Banking into the Nigerian Banking system; promotion and sponsoring of Pilgrimage by both Federal and State Governments; and the introduction of Sharia Law by some of the Northern State Governors give rise to this study. The importance of both Secularism and Sharia Law was examined and how it affects the citizens when being implemented. The article also ascertains the position of Nigerian government concerning "Secularism and Sharia Law". An "Exploratory research design" was used. It was discovered that: Secularism gives religious freedom while Sharia Law makes Muslims practice their religion in totality; the Nigerian government is siding religion other than secularism as obtained in the Constitution (section 10). And it was recommended that: Any individual campaigning for public office that uses religion as a medium should be disqualified; Not all religious festivals should be given public holidays, at most two each from the known religions; Nigerian government at all levels should promote "morality" instead of religion since all religions promote a good moral life among its adherents; a column for "Religion" should no longer be included in any form to be completed. Furthermore, no government in Nigeria, Federal, State or Local, should fund religion or religious activities in any way.

Keywords: Secularism, Sharia Law, Nigeria Constitution

Introduction

Secularism is not simply a concept, as understood widely, where the government of nations and their entities keep religion separate from state affairs. Secularism is something much more complex than the conventional definition. Does secularism mean the elimination of religion? Is it merely a separation of state and religion? Could a human being be secular, completely denying the existence of God? Even if one denies the existence of religion, could he/she live a life completely detachable from the judgments which is shaped by religion? Numerous questions can be raised when it comes to defining secularism (Shah, 2020, p. 187).

In another development, Sharia and Islam constitute one of the key indices in

the current Nigerian constitutionalism and democracy project (Oraegbunam, 2011, p. 181). Although it has made a considerable inroad into the nation's principles, Islamic law still seeks to extend the prongs of its justice system beyond the Jurisdictional scope granted it by the 1999 Constitution. The effect is that most states have adopted criminal and other aspects of the legal regime in northern Nigeria but not without an affront to the secularity principle that should undergird national affairs.

The relationship between Islam and democracy in the contemporary world is quite complex. This is because the Muslim world is by no means ideologically a monolith (Oraegbunam, 2011, p. 181). Various Islamic adherents and groups' exhibit varied attitudes to

popular and modern notions of democracy and its tenets. Nigeria as a case study battle with a lot problems when it comes to application of Sharia in mixed population as in a case of Kaduna State, at one end are mainly non-Muslims who believe that application of Islamic criminal laws beyond the provisions of the Constitution would collide headlong with modern democratic principles and multi-religious nature of Nigeria.

The other rung of the ladder is occupied by mainly pious Muslims, for whom the idea of secularism is purely of Western, foreign and secular origin, and has nothing to do with Islamic practice. For some time now, the Muslims, predominant in the North, have always insisted on “dipping the Koran in the Atlantic” especially by seeking to introduce full Sharia legal system into all corners of the country. On the other hand, the non-Muslims, especially Christians, prevalent in the South, following their religious beliefs and convictions, would not accept to be governed or even affected by Islamic law. The different positions have often resulted to violence, destruction, and death (Oraegbunam, 2011, p. 183).

Nigeria is a multi-religious nation which makes it impossible to have a state that is 100% Muslim or Christian. Some Muslims perceived that they are incomplete Muslims without Sharia, and Non-Muslims on the other hand feel that the implementation of Sharia is a violation of their rights as non-Muslims. This paper clearly seek to bring to light the position of the Nigerian government when it comes to Secularism and Sharia law (Religion). To achieve that the aim of this article, therefore, a review of Government activities as regard religion over the years shall be made, that will aid in determining the position of the

government. Consequently, the following questions are raised: can't a Muslim be fulfilled without practicing Sharia? Can Sharia be implemented without obstructing the freedom of non-Muslims? Can Nigeria Government play the middleman without taking a side when it comes to religious matters? The article also outlines the importance of Secularism and Sharia Law, and offer some recommendations that may help the Nigeria situation.

Theoretical framework

Pippa, & Ronald as cited in Ademowo, write, there are two traditional theories of secularization namely: demand-side theories and supply-side theory. According to them, the Demand-side theory focus ‘bottom-up’ on the mass public suggesting that as societies industrialize, religious habits will gradually erode, and the public will become indifferent to spiritual appeals. While the supply-side theory, on the other hand, focuses ‘top-down’ on religious organizations as it “emphasizes that the public demand for religion is constant and any cross-national variations in the vitality of spiritual life are the product of its supply in religious market’. Therefore, the supply-side theory suggests that the more churches or mosques/or other religious center established, the more people will become attracted to religion (2014, p. 7).

From the above theories, the second theory, “supply-side theory”, explain the Nigeria situation, based on observation, Nigeria has more of Churches and Mosques than Schools, (in my community, there are five places of worship and only two schools) and as stated above “...more people will become attracted to religion.” It is indeed a clear fact that Nigerians tend to be more religious, (due to existence of more places of worship than schools) but even

at that, the life style of the people when it comes to morality did not tally, in which you can't help it but to ask which path is the nation following; "Secularism" (when some people thinks it's an absent of religion) or a "Religious" path? In this article the "Supply-side Theory" is adopted, because despite the existence of "Secularism" in the Constitution of the nation, Nigerian government has in so many instances refused to comply or adhere with that section of the Constitution (Section 10). And even with the strong adherents to religious believe and practice by both citizens and the government, the society has not felt the impact of such religious activities and practices.

Conceptual clarification of concepts

Secularism is an orientation to life that places paramount importance on the matters of 'this world' and considers observation and reason as the best means by which the things of this world can be known and improved. It has its roots in response to religious belief but is not necessarily a form of religion. According to Charles Taylor (2014):

secularism aim at managing the religious and metaphysical-philosophical diversity of views (including non- and antireligious views) fairly and democratically by setting certain limits to religiously motivated action in the public sphere, but it will also involve similar limits on those espousing non- or antireligious philosophies (p. 5)

In another development:

Secularism is the constitutional principle according to which political and religious institutions are separated into different realms, the political authority is neutral toward all religions and faiths as well as non-religion, and the constitutional principles, laws, and policies of the state are justified not with reference to any specific religion, but with reference to secular reasons (Adil, 2015, p. 2-3).

In this paper "secularism" is seen as a doctrine that ensures that no form of domination is practiced either in general life in society or in the religious setting. That is, it makes sure that when it comes to religious practice, one religion will not dominate the other or among the same religion no domination between one sects or the other.

Having said that, a secular state is described thus:

any state or country purports to be officially neutral in matters of religion, supporting neither religion nor irreligion; a state that treats all its citizens equally regardless of religion or irreligiosity; and claims not to or ceases to give preferential treatment(s) to a citizen (or citizens) of a particular religion over another with different religions/non-religious affiliation(s) (Ademowo, 2014, p. 5-6).

According to Egboro, (2011):

Historically, the process of secularising states typically involves the following: granting religious freedom, disestablishing state religions, stopping public funds to be used for a religion, freeing the legal system from religious control, freeing up the education system, tolerating citizens who change religion or abstain from religion, and allowing political leadership to come to power regardless of religious beliefs (p. 7)

The above is not far fetch or distant from what is obtainable in Nigeria, despite the 'secular pact' enshrined in Section 10 of the 1999 Constitution. While Shah (2020), in his paper titled: "Secularism - An Impractical Idea" was of the view that: "The concept of secularism should be distinguished as 'secular human' and 'secular state". He went ahead not that, "being secular human being and secular state are two different things". In his opinion, to be a secular human being, one must deny the existence of God completely; and to be a secular state, the state can adopt two ways. Either she can completely deny the existence of god and dissociated herself

with religion or accept the existence of god and adopt secularism as a way of peaceful co-existence and mutual harmony. He further opined that, there are two different essences of secularism: First essence is to eliminate the god and supernatural factors. He explains that there should not be any position for supernatural religion in the world. And that an individual secular human being mainly follows this essence. While the second essence of secularism accepts the presence of religion; but not only one religion. And it stresses on mutual co-existence of different religions in the world. For him a secular state follows this essence. He finally took a standby saying that: secularism is merely an ideology; it is not pragmatically possible. To him, neither a human being, nor a state could be secular (p. 193-194). The last word of Shah concerning human being and the state, we find it interesting, and we agree with his view on this ground: “human being by nature is a religious being, by the essence of his creation, he was created with a natural substance of religiosity, that man feels something is greater than him, and by extension, he gives credence to a supernatural being. So no matter how one tries to run away from religion, his spirit will always direct him back, especially when something happens to him that is beyond his understanding, he often attributes it to a supreme being”.

Sharia on the other hand is “an Arabic word that literally means a drinking place or a path leading to a watering hole” (Ubaka, 2000, p. 11; Kenny, 1986, p. 20). This implies that since water is regarded as a source of life, Muslims claim that Sharia is the fountain of not only earthly but also eternal life. Farlex (2009, n.p) opined that, Sharia as a “code of law derived from the Koran and from the teachings and examples of Mohammed”.

Johnson (2009, n.p) expands the meaning of Sharia as “inspired not only by Islam and Koran but also by Arabic traditions and early Islamic scholars”. Oraegbunam, (2011) is of the view that, Sharia is understood as:

Constituting those rules of conduct derived from different sources of Islamic religion and codified into a body of law by relevant legislatures with the intention of getting them enforced through state machinery. It is equally understood as that body of Islamic law as interpreted by the Maliki School of Islamic jurisprudence which is the only acceptable version in Nigerian Islam. (p. 184).

How can there be a balance in the society that non-Muslims equally have their fundamental human right as obtain in the Constitution 1999, Sec. 41 (1) & 42 Thus: the right to earn livelihood in his chosen place of residence by means permitted by law, and the right to be treated alike by the state with other citizens. Therefore, there is no doubt that any action by a state government violating these citizenship rights through the enforcement of Sharia criminal law would have the effect of expelling from the state a Non-Muslim Nigerian citizen who, for religious or other reasons cannot live under the strict injunctions of and punishments prescribed by the Quran. The question is, how can a nation like Nigeria have such laws in its Constitution and yet allow a state(s) within its territory to adopt a state religion? In this paper Sharia is seen as the total way of life of a Muslim, a religious guide, which makes them complete and gave them the assurance of life hereafter.

According to Oraegbunam, (2011, p. 183), for sharia law to be practiced in a state, one or many of these must be implemented: “Injunctions against operating a hotel or a drinking place, the consumption of alcoholic drink, and

certain modes of dressing which are not necessarily forbidden by the non-Muslim's religion". The argument that the non-Muslims are subject to a different criminal law within the same geographical jurisdiction does not convince anyone about the effect of the adoption on citizenship rights of non-Muslims. There is no doubt that Sharia criminal justice foster brotherhood among Muslims, but it does not promote national unity. And if the federal government role is to promote national unity, how can it achieve that by allowing the application of Sharia Law in some parts of the state. Besides, sharia law does not regard all citizens as equal before the law. This is quite illustrated in the real distinction in Islam drawn among 'house of Islam', 'house of war', and 'people of the book.

Even though, Sharia law is discriminating, its role on morality is worth giving attention. Amucheazi and Onwuasoanya as cited in Oraegbunam, (2011), are of the view that, the introduction of Sharia codes in Nigeria geared towards:

Enforcement of morality". This is perhaps true as most of the offences codified in the codes are clearly within the realm of morality, such as: Adultery, fornication, sodomy, rape, bestiality, stealing, homicide, incest, and abortion, are instances of immoralities that are criminalized by the Sharia codes (p. 195).

However, the above are both in the Criminal Code of the southern states and the Penal Code of the remaining northern states contain to the relevant extents offences that are clearly moulded from the moral clay. What is however problematic is to what extent would immoralities be raised to the status of crimes? No doubt, a school of jurisprudence is of the view that certain acts though immoral should be outside the purview of legal consideration;

instead, they should precisely as strictly moral issues be left to the rumination of individual consciences (ibid p. 195).

From the above discussion, "Secularism and Sharia Law" Nigerian citizen and government respond differently to the above concept, it is clear enough to understand by way of observation and as a citizen, that many holds the same view as did the Nigeria Pilot as cited in Ademowo (2015) which says that:

Man is fast losing his spiritual essence to his pompous knowledge and its dynamic power which has immensely affected the world in all its ramifications...we are (today) living in a world where science and arts are being aggressively deployed to wage war against the spiritual man. Religious symbols are being destroyed by drunken secularism, driven by the Western world (p. 2).

Muslims in Nigeria sees secularism as way of depriving them of being true Muslims, it is evident in this claim, by the way in which Sharia Law is being promoted at the expense of secularism. On the other hand, Christian tends to support secularism due to the freedom nature it gives to "religion". With these two-contending people, who will safe guide the two in other to have a middle ground which both parties will operate and will not feel cheated or deprived of their own fundamental human rights? The answer is the "Government". Another question is, how has government responded to mediate in ensuring that its citizen are treated the way it should? Government policies, actions and inactions will be outline below to see their position as regard the above two concepts.

The Nigeria government position

Contextually, Nigeria practices the direct opposite of what is posited in the Constitution, concerning the secular

nature of the country (section 10), for instance:

1. In 1986, Nigeria was registered and admitted into the Organization of Islamic Countries (OIC),
2. Sani Abacha registered Nigeria as a member of D-8 (Developing-8), an organization for development Cooperation among Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan and Turkey;
3. Nigeria is a major shareholder of Islamic Development Bank (organization of Islamic Cooperation);
4. The introduction of Islamic Banking into the Nigerian Banking system.
5. Promotion and sponsoring of Pilgrimage by both Federal and State Government; and
6. The Introduction of Sharia Law by some of the Northern State governors (Ademowo, 2014, p. 9-13).

Apart from these, Federal Government observe any small religious holidays which speaks otherwise about the secular nature of Nigeria as obtained in the Constitution. Over the years some state adopted sharia law in Nigeria. From 1999 till date there is a dramatic turn of events in the enforcement of Islamic law in Nigeria. Following a new interpretation of the Constitution of Federal Republic of Nigeria (C.F.R.N 1999), most northern states led by Zamfara made certain laws, repealed some, and amended some. By these they established Sharia courts and vested them with not only the entirety of civil but also criminal jurisdictions. Zamfara State, for instance, arrived at these by way of five laws. They include: (a) Sharia Court (Administration of Justice and Certain Consequential Changes) Law No. 5, 1999; (b) Sharia Court of Appeal (Amendment) Law No. 6, 2000; (c) Area Courts (Repeal) Law No. 13, 2000; (d) Sharia Penal Code Law 1999; (e) Sharia

Criminal Procedure Code Law No. 18, 2000 (Oraegbunam, 2011, p. 191).

Africans in general and Nigerians in particular, are religious being by nature, reason been that, the culture of Africans and Nigerians in particular religion is part and parcel of a Nigerian man. Believe in a supernatural being is fundamental in Nigeria culture. The introduction of the two foreign religions (Islam and Christianity), further draw the Nigerian man to be religious conscious. Islam sees religion and the state as two sides of the same coin, this implies that you cannot separate religion from the state nor state from religion, while Christianity on the other do not bother more in joining the state and religion rather the two can function independently without necessarily joining the two, in which some believe that one will be corrupt when you join the state.

Nigeria as a case study, found itself with these two great religions, that as human beings each has its own right whether to allow religion to be part of the state or not. The above discourse has shown beyond doubt the position of Nigerian government when it comes to "secularism" despite the fact that it is obtained in the nations constitution. How can you find a balance in ensuring that a Muslim does not feel cheated nor a non-Muslim feel being deprived of his fundamental human right?

Questions were raised from our previous discussion, an attempt on them will be made: Can a Muslim be fulfilled without sharia law? When you look at religion as a personal conviction, and you have a reward or a life after this life as it is commonly believed by the two religions, then you don't need to wait for someone to enforce a law for you to be a true religious person, but your knowledge of your religious believe you

can actually practice what is obtainable by your religion, without causing any hindrance to someone who is not of your own religion. If that is in place, then all Muslims can actually practice sharia law without bringing it to the public thereby making them fulfilled Muslims. This by no means implied that “Sharia can be implemented without obstructing the freedom of non-Muslims” only when it is not insisted to be made public.

And can Nigeria Government play the middleman without taking side when it comes to religious matters? Our study has already revealed the position of Nigeria government when it comes to religious matters today it is very pathetic, because Nigerian education system observes every single religion feast or festival, it is so bad to the point that it is being captured in the school calendar. But all hope is not lost, only and only if the government will adopt what is called: “Secular Attitude of accommodation”. This is a process whereby the secular state will seek to treat all religions equally in recognition, supports and funding. None of the religions and religious groups will be taken or recognized as higher than the other.

Importance of Secularism

The most important aspect of secularism is its separation of religion from State power. This is important for a country to function democratically. Almost all countries of the world have more than one religious group living in them. Within these religious groups, there will most likely be one group that is in a majority. If this majority religious group has access to State power, then it could quite easily use this power and financial resources to discriminate against and persecute persons of other religions. This tyranny of the majority could result in the discrimination, coercion and at times even the killing of

religious minorities. The majority could quite easily prevent minorities from practicing their religions. Any form of domination based on religion is in violation of the rights that a democratic society guarantees to each and every citizen irrespective of their religion. Therefore, the tyranny of the majority and the violation of Fundamental Rights that can result is one reason why it is important to separate the State and religion in democratic societies (Understanding Secularism, n. d: p. 20).

Phillips (2011) outline the following as the importance of secularism:

1. Ensuring there is no official state – recognized religion. That is, preventing religious majority from persecuting religious minorities / those with other beliefs.
2. Promoting equality before the law. This has to do with putting aside discrimination in employment, education and receipt of publicly funded services even where these are provided by religious organizations.
3. It promotes one law for all. This important point seeks to put an end to the use of parallel laws.
4. Secularism appears to protect freedom of belief. It supports the right of individual (s) who change their faith or abandon it according to their conscience.
5. Promoting fairness for everyone; all groups, non-religious and religious should have equitable access to government influence and resources. Thereby, ending special considerations like tax exemptions to the select few, on the basis of religious argument or belief system.
6. Promoting social cohesion, sense of common identify comes from educating children together rather than giving room for religious and denominational centered learning (p. 10-11).

Importance of Sharia Law

Abdullah (2003, p. 6) succinctly outlines some of the specific importance of Islamic Sharia to human society, namely:

1. Eradicating poverty and creating conditions for full employment and high rate of economic growth through proper planning and building necessary physical and social infrastructures.
2. Promoting stability in the real values of life.
3. Maintaining law and order, ensuring social security and economic justice.
4. Fostering equitable distribution of income; and
5. Wealth.

Oraegbunam, argued this out vehemently, according to him, what Abdullah claim to be importance of Sharia, is one sided reason being that, it cannot stand out or serve as importance in this 21st century and in a multi-religious and cultural society as that of Nigeria. The author picked one after the other the above stated importance of Sharia law and discussed with evidence how it fails to meet up what it claims to have stand for (CF Oraegbunam, 2011, p. 193- 200).

Recommendations

From all the above discourse, and looking at the nature of Nigeria, the nation can only make it better if the government take heed to the following recommendations:

1. Any individual campaigning for public office and uses religion as a medium should be disqualified.
2. Not all religious festival should be given public holidays, at most two each from the religions.
3. Nigeria government at all levels should promote “morality” instead of religion, since all religions promote a good moral life among its adherents.
4. The Column for “Religion” should not be included in any form to be filled and during national census.
5. That no government in Nigeria, Federal, State or Local shall fund religion or religious activities in any way.
6. No government in Nigeria shall affiliate in a religious organization, within or outside the nation.

7. No government shall adopt a law peculiar to any religion.
8. Any State that breaches section 10 of the Constitution shall be deemed to have withdrawn from the Federation and, therefore shall, after due process, be denied Federal allocation of funds until purges itself of its effrontery.

Conclusion

Nigeria cannot practice true democracy without practicing secularism, reason being that democracy goes with freedom of expression/practice by individual in all aspect of life. Nigeria is such a nation that is so complex due to religious and ethnic diversity. The diversity nature of Nigeria ought to be a model in determining how it should be governed; and the people in the hem of governance are supposed not to be sentimental, tribalistic, and religious bigot. The reverse is the case looking at the above study. Implementing total secularism in Nigeria is not going to be a good idea, nor adopting theocentric administration. Be that as it may, those in charge of affairs of government are to take a middle ground without prejudice and encourage its citizens to live up the tenets of their religion that promote unity and peaceful co-existence without taking sides and leave religious matters to religious leaders without government interference. And above all, Muslims should come to terms with the fact that “if Allah had willed all people would have practiced the same religion” but since he allowed other religions to exist, a reorientation is needed on how to practice Islam without infringing on the right of other religious adherents, and same is expected of other religions other than Islam.

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